

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawaii 96813

January 28, 2000

Chairperson and Members
Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Land Board Members:

SUBJECT: REQUEST FOR APPROVAL TO RELEASE FOR PUBLIC REVIEW THE
DRAFT SAFE HARBOR AGREEMENT AND INCIDENTAL TAKE PERMIT
FOR THE REINTRODUCTION OF THE NENE TO PUU O'HOKU RANCH,
ISLAND OF MOLOKAI

In 1997, the Hawaii State Legislature took a bold step to improve the State Endangered Species Act (ESA) by remolding an ESA with a strict, regulatory approach for conserving endangered species into an ESA that combines protections, innovative tools to provide management flexibility, and incentives to private landowners to conserve endangered species on their lands. One such tool is the Safe Harbor Agreement where a landowner agrees to do something beneficial for endangered species, in exchange for a guarantee that they will not be penalized for their "good deed". Under a safe harbor agreement, landowners may agree to maintain or restore endangered species habitat on their lands or reintroduce an endangered species onto their property, in exchange for assurances they won't be subjected to increased land-use restrictions or increased liability and regulation under the Endangered Species Act. If they eventually decide to develop or alter their property, the presence of the endangered species will not prevent them from doing so.

Today, we bring before you the first proposal developed under this new law, a Safe Harbor Agreement (Attachment I) to reintroduction the Nene, Hawaiian Goose, to Puu O'Hoku Ranch, Molokai. The desire of the landowner and the Department is to establish a free ranging population of 75 nene on Ranch Premises and 200 nene on Molokai. If successful, this will restore the nene to this part of its historic range, increase the current range and total population of nene in the State and speed the recovery of this endangered species. Under this Agreement, the Ranch will maintain or improve significant amounts of nene habitat for a period of seven years, by continuing cattle ranching operations and thereby maintain open, short grass habitat; assist DLNR

to establish and maintain release sites and assist DLNR to control predators around breeding and release sites. Without this cooperative government/private landowner effort, these lands would not be utilized by nene in the foreseeable future. Under this Agreement, the Ranch is authorized the incidental take of all nene introduced to the enrolled lands, and their progeny, as a result of lawful activities at the Ranch. The Ranch has no intention of harming or taking any nene, but is herein provided the protections of incidental take, as provided by State and Federal Law. The resource questions involved in entering this agreement are: 1) will this agreement maintain a significant amount of habitat for a minimum of 5 years?, and 2) will the agreement achieve the desired benefits in exchange for an incidental take permit in perpetuity? The Department believes this agreement will achieve those goals and result in a net conservation benefit to the nene.

This request is to start the public review process. With Board approval, a notice of the availability of the draft Safe Harbor Agreement, draft Incidental Take Permit, Board Submittal, and comments from the Endangered Species Committee, will be published in the February 8, 2000 OEQC Bulletin. The Department will solicit public input and hold a public hearing on Molokai during the next 60 days. Following the public review process, the applicant and Department will revise the Agreement and submit it to the Endangered Species Recovery Committee for their review. The Committee will provide final recommendations to accept, amend, or reject the proposal, and the Agreement and Permit will be resubmitted to the Board for their final consideration and approval. This process could be completed as early as April or May of 2000 (see Attachment II).

There are two policy considerations involved in this Agreement. One, will the State take a proactive approach to recover endangered species on private lands, by providing private landowners adequate assurances that the mutually desired reintroduction of an endangered species on their property will not impose additional land-use restrictions, liability or new regulations? We believe this is imperative, and that this agreement provides those assurances. Secondly, what effect will this agreement have on other private landowners on Molokai, whom currently do not have a Safe Harbor Agreement? The federal process provides for an "umbrella" agreement, where the Department could become an intermediary agency and develop a safe harbor program for all of Molokai, that would enable any willing landowner to easily enroll under the Department's umbrella agreement, and obtain the same protections as this landowner. Such an agreement has not yet been developed in Hawaii.

The Endangered Species Recovery Committee has reviewed the proposed Plan and their comments are submitted as Attachment III.

RECOMMENDATION:

That the Board authorize the release for public review of the Draft Safe Harbor Agreement and Incidental Take Permit for the Reintroduction of the Nene to Puu O'Hoku Ranch, Island of Molokai.

Respectfully submitted,

Signed by Michael G. Buck

MICHAEL G. BUCK
Administrator

Attachments (I, II & III)

APPROVED FOR SUBMITTAL:

Signed by Timothy E. Johns

TIMOTHY E. JOHNS, Chairperson
Board of Land & Natural Resources

(Approved by the Board of Land and Natural Resources at its meeting held on 1/28/00.)

Attachment I.

Safe Harbor Agreement For The Introduction Of The Nene To Puu O Hoku Ranch, Island Of
Molokai (1/18/00 Draft)

**SAFE HARBOR AGREEMENT
FOR THE REINTRODUCTION OF THE NENE
TO PUU O HOKU RANCH, ISLAND OF MOLOKAI**

This Safe Harbor Agreement (the "Agreement") is made and entered into as of the day of _____, 19____, by and among **PUU O HOKU RANCH, LIMITED** ("Ranch"), the **U. S.. FISH AND WILDLIFE SERVICE** ("USFWS") and the **STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES** ("DLNR"), by its Board of Land and Natural Resources, hereinafter collectively called the "Parties".

RECITALS

A. **INTRODUCTION.** The collective desire of the Parties to this Agreement is to reintroduce the nene or Hawaiian goose (*Branta sandvicensis*) to Puu O Hoku Ranch, Molokai. Nene do not currently exist in the wild on Molokai and the reintroduction will help re-establish a wild free-ranging population. It is the hope of all Parties that the nene will prosper, expand and repopulate the Island of Molokai. This reintroduction will potentially establish a free ranging population of 200 nene on Molokai. Of those, the Parties anticipate that the Ranch property will support approximately 75 nene. The re-establishment of nene on Molokai will increase the current range of the species in the wild and restore the nene to this part of its historic range, increase the total population of nene in the State and speed the recovery of this endangered species.

This Agreement covers proposed management activities affecting lands owned or otherwise controlled by Puu O Hoku Ranch, Limited. Under this Agreement, the Ranch will maintain or improve significant amounts of nene habitat for a period of seven years by continuing cattle ranching operations, thereby maintaining open, short grass habitat; assist DLNR to establish and maintain release sites and assist DLNR to control predators around breeding and release sites. This Agreement covers only the native Hawaiian goose, or nene (*Branta sandvicensis*). The large expanse of suitable habitat on the Ranch will provide the core areas for nene to become established on the island of Molokai and from which to expand out to other appropriate habitat on Molokai, thereby achieving the long-term recovery goal of 200 nene on the island. Without this cooperative government/private landowner effort, these lands would not otherwise be utilized by nene in the foreseeable future. Under this Agreement, the Ranch is authorized the incidental take of all nene introduced to the enrolled lands, and their progeny, as a result of lawful activities at the Ranch. It is the hope of all Parties that the maximum level of incidental take authorized under this agreement will never be realized.

B. **BACKGROUND.** **Nene Recovery.** Nene, or Hawaiian goose, (*Branta sandvicensis*) inhabit grazed pastures and upland scrub in Hawaii on the islands of Kauai, Maui, and Hawaii. On March 11, 1967, the nene was designated an endangered species

due to its low numbers and lack of self-sustaining populations. Predation and commercial hunting were major contributors to the historic decline of nene. Recent research has indicated that predation on eggs and young by rats and mongooses and adult predation by feral dogs are the most important factors limiting the recovery of nene. In order to ensure the recovery of nene in Hawaii, the number and size of areas populated by nene must be increased.

Since 1993, the approach for expanding the range of wild nene in Hawaii has been to establish predator-resistant breeding/release pens in habitat where there is sufficient food and on-going predator control efforts. The pens are used for initial releases of goslings in these areas and are available in subsequent years as predator-protected areas for future generations to raise young.

Importance of Private Lands. Unlike endangered forest birds in Hawaii, which are usually restricted to remote forested habitats that are often under state or federal jurisdiction, nene routinely travel between open grassland areas that are privately owned. Very little good nene habitat is on lands under the jurisdiction of government conservation agencies; in fact, the majority of good nene habitat is on private lands, which are used for cattle grazing. Experience indicates that these grazed pastures are excellent for nene because cattle grazing stimulates the production of new grass shoots, which are favored nene food; water is available in stock ponds or mechanical water units; and feral dogs are less prevalent because of control efforts incidental to normal ranch activities.

A major step in the restoration of nene therefore, is to encourage the presence of nene on private lands. A significant component of this restoration is the development of a program under §10(a)(1)(A) of the Federal Endangered Species Act and §195D-22 Hawaii Revised Statutes that encourages the assistance of private landowners in the recovery of threatened and endangered species, in return for protection - a "safe harbor" - from any additional future liabilities under State and Federal endangered species law. This Safe Harbor Agreement will help the recovery of nene in Hawaii by permitting the landowner to encourage the use of the enrolled lands by nene without subjecting the Ranch to additional liability.

C. NET CONSERVATION BENEFIT TO THE SPECIES. This Safe Harbor Agreement will increase the likelihood that nene will recover by allowing the release of nene into suitable habitat in a remote area on Molokai, an island which is part of the historic range of the species, but currently unoccupied by nene. The hope underlying this Agreement is that the release of nene on participating land will result in the establishment of a self-sustaining permanent population of nene on Molokai, as has occurred on Kauai, the subsequent use of a significant amount of short grass habitat on the Ranch, and expansion of the population to adjacent suitable private and public lands containing nene habitat. The large expanse of suitable habitat on the Ranch will provide the core areas for

nene to become established on the island of Molokai with the long-term recovery goal of 200 nene on the island. Of those, it is hoped that the Ranch Premises will support a population of approximately 75 nene.

Based on evidence from Kauai, the seven-year duration of this Agreement is considered to be sufficient to establish an incipient population on Molokai. It is hoped that the nene released under the Agreement, and any offspring they may produce, will not cease to exist on Molokai upon expiration or termination of the Agreement. Adult birds will be able to seek out suitable habitat on their own outside the release area, while young birds will be available for translocation to other locations, if needed. It is hoped that this Agreement will result in an increase of the number of nene on Molokai and an increase in the total area of suitable habitat on private lands utilized by nene. Without this cooperative government/private landowner effort, these lands would not otherwise be utilized by nene in the foreseeable future. It will also provide an example of a mutually beneficial relationship between government agencies and a private landowner to the benefit of an endangered species, and evidence that nene can coexist with current land use practices.

It is hoped that this Agreement will result in the following benefits to the species: 1. establish a new population of nene on an island where they do not currently exist in the wild; 2. increase the current range of nene, thereby helping to protect against catastrophic loss of the species; 3. provide an opportunity to increase genetic diversity in the species; 4. increase the number of nene in the wild by at least 200 individuals; 5. provide the opportunity to determine the effectiveness of applied management techniques for threatened and endangered species; and 6. provide an additional source of nene for future management activities, if warranted. Therefore, the cumulative impact of this Agreement and the activities it covers, which are facilitated by the allowable incidental take, will provide a net benefit to the species.

NOW, THEREFORE, in consideration of the promises and mutual covenants and agreements of the Parties herein set forth, the Parties agree as follows:

AGREEMENT

1. **PURPOSES.** The purpose of this Agreement is to facilitate the restoration of nene to the wild on Molokai by, (a) establishing the terms and conditions of the release and reintroduction of nene on Ranch Premises, and (b) authorize Puu O Hoku Ranch to take nene, incidental to lawful activities on the Ranch.

2. **AGREEMENT DURATION.** This Agreement will be in effect for seven years following its approval and signing by the Parties .

3. DESCRIPTION OF COVERED LANDS. Enrolled lands are the lands owned or otherwise controlled by Puu O Hoku Ranch ("Ranch Premises") on the island of Molokai.

4. BASELINE DETERMINATION. The baseline is the number of nene currently nesting on the Ranch Premises. As of the date of this Agreement, there are no wild nene on Molokai and no nene whatsoever on Ranch Premises. Therefore, the baseline for this Agreement is zero (0).

5. MANAGEMENT ACTIONS FOR COVERED SPECIES. This Agreement provides for cooperative management activities of the Parties including releases of nene in an approximately 735 acre portion of Ranch Premises identified by Tax Map Key No. (2) 5-8-15:1 shown crosshatched on Appendix III attached hereto and incorporated herein by reference ("Cape Halawa") and other areas on the Ranch Premises mutually approved by the Ranch and DLNR, construction and maintenance of two nene release pens, control of predators in and around release pens and breeding areas, care of nene in release pens, medical care of nene, monitoring, and the maintenance or improvement of Cape Halawa currently managed as short-grass pasture by cattle ranching activities. The Ranch will maintain or improve Cape Halawa, which is considered to be a significant amount of nene habitat, throughout the duration of the Agreement, except in the event of a natural disaster such as a hurricane or severe drought. The Ranch will also assist DLNR, whenever possible and to the extent resources are available, in carrying out its nene management activities on the Ranch.

6. INCIDENTAL TAKE OF COVERED SPECIES. Under this Agreement, the Ranch is authorized the incidental take of all nene introduced to the enrolled lands, and their progeny, as a result of lawful activities at the Ranch, from the time this Agreement is signed into the future. The Ranch may continue current land use practices, undertake new ones, or make any other lawful use of the property, even if such use incidentally results in the loss of nene or their habitat covered under this Agreement.

The Ranch is specifically not precluded from conducting any activity by this Agreement. Among the activities the Ranch plans to continue, which in no way shall be considered a limitation on any other activity the Ranch desires to engage in, are the following activities that may result in an unintentional incidental take of nene: 1) cattle ranching, 2) eco-tourism, 3) recreational hunting, and 4) cultivation of agricultural crops. There is no planned modification of the short-grass nene habitat at Cape Halawa during this Agreement.

To minimize the likelihood of incidental take and help enhance the likelihood that the reintroduction of nene to the enrolled lands will result in attaining the stated goal of a

population of 75 nene on the Ranch Premises, incidental take permits issued by the USFWS and DLNR will include the following conditions:

- a. Reasonable reporting to DLNR and USFWS of any incidental taking, including injury or killing of a nene and any incidental "death" of a fertile egg. Such reports of incidental injury or death will be thoroughly reviewed by DLNR and USFWS and procedures suggested to the Ranch to avoid future incidental injuries or deaths.
- b. In the event that one-third or more of the nene introduced to the enrolled lands in the first year of the reintroduction effort are incidentally injured or killed and/or one-third or more of the progeny of the introduced birds (including fertile eggs) are incidentally injured or killed, the Ranch will:
 - i. confer with DLNR regarding the activities or circumstances resulting in injury or death.
 - ii. work cooperatively with DLNR to remove and/or minimize the threats to the nene on the enrolled lands that resulted in the incidental take episodes. If mutually agreeable procedures cannot be developed, DLNR may remove nene from the areas involved.
 - iii. as a last resort, cease all attempts at establishing the population of 75 nene on Puu O Hoku Ranch, and allow DLNR to remove all live nene from the Ranch Premises.
- c. When situations arise that pose a threat of adverse impacts to nene and the Ranch, DLNR, and USFWS have actual knowledge of such situations, then the Parties shall confer within 10 working days for the purpose of developing measures to address such situations.

Without any limitation on the general nature of the incidental take authorized under this Agreement, Puu O Hoku Ranch shall not be held responsible for any death or injury of nene resulting from a *force majeure* event. The term *force majeure* means events that are beyond the reasonable control of, and did not occur through the fault of negligence of, Puu O Hoku Ranch, including but not limited to: "acts of God" or sudden actions of the elements, including fire, excessive rainfall, and drought. Should a *force majeure* event occur that results in injury or death of nene on the enrolled lands and the principals of the Ranch have actual knowledge of the event, then Puu O Hoku Ranch should simply report such an event to DLNR and USFWS within 10 days of the occurrence.

A plan to deal with injured nene and nene carcasses is attached as Appendix IV (Appendix IV. Guidelines for Handling Injured Nene and Nene Carcasses.)

7. RESPONSIBILITIES OF THE PARTIES.

Puu O Hoku Ranch – Whenever possible during the term of this Agreement and to the extent resources are available (and without the assumption or imposition of any liability whatsoever for its actions or omissions), the Ranch will accommodate and assist the DLNR's release and reintroduction of nene by:

- a. Allow the release of nene at Cape Halawa and the Ranch may, in its sole and absolute discretion, consent to additional nene release and reintroduction activities at other areas on the Ranch Premises during the term of this Agreement;
- b. Assist DLNR in maintaining the release pens and waterlines;
- c. Assist DLNR with feeding and watering nene when they are in the pens;
- d. Provide reports to DLNR on nene mortalities, injuries, or disease observed on the Ranch Premises;
- e. Assist DLNR with the annual count of nene on the Ranch Premises;
- f. Assist DLNR in conducting predator control operations in and around the release pens, and once nene become established in the wild, assist DLNR with predator control operations in and around breeding areas within Ranch Premises;
- g. Assist DLNR in responding to requests for assistance from immediate neighbors with reports of nuisance nene, or cases requiring nene rescue;
- h. Notify DLNR within 30 days in advance of any planned land use practice (e.g., controlled burn, fencing, construction, tilling, hay operation, etc.) which the Ranch reasonably anticipates, in its sole judgment, will result in the incidental take of nene on the enrolled lands; and provide DLNR with the opportunity to capture and/or relocate any potentially affected nene;
- i. Notify DLNR at least 10 days prior to any planned activity occurring during nene breeding season (approximately October through March) that the Ranch reasonably anticipates, in its sole judgment, will adversely affect any adult, nest or goslings, in order to allow DLNR personnel an opportunity to collect eggs and/or goslings in the area;
- j. Not allow game bird hunting within Cape Halawa; and

- k. The DLNR may enter onto Ranch Premises for the sole purpose of conducting its normal nene release and reintroduction activities between the hours of 7:00 a.m. and 4:00 p.m., Monday through Friday, and pursuant to a schedule approved in advance by the Ranch. It shall be the specific responsibility of the DLNR to insure that only its employees and no other party enters onto the Ranch Premises pursuant to this Agreement, unless DLNR obtains prior written approval of the Ranch. In the event of an emergency, the DLNR may enter onto the Ranch premises to care for and protect the nene at any time. The DLNR will not interfere with any work being performed, or other operations being carried out, or use being engaged in or on Ranch Premises, by or on behalf of, or authorized by the Ranch or others entitled to use the Ranch Premises.

DLNR-

- a. Construct and maintain one or two nene release pens and waterlines;
- b. Provide food and ensure there is an adequate supply of water and otherwise care for the nene within the release pens;
- c. Provide physical examinations and necessary medical care for the nene;
- d. Release cohorts of banded nene in numbers necessary to establish a viable population in the area;
- e. All nene released will be banded with an aluminum USFWS band and a uniquely coded color plastic band.
- f. DLNR will conduct predator control activities, mutually agreed-upon with the Ranch, for the control of mongooses, rats, cats, and dogs in and around the nene release pens, and when feasible, in and around other breeding areas on the Ranch, within the limits of staff and funding resources;
- g. Monitor nene;
- h. Conduct monitoring and management activities in a manner not to interfere with the everyday operation of the Ranch; and
- i. Annually provide the Ranch with a list of its employees who are authorized to enter onto the Ranch Premises.

USFWS-

- a. Provide information on federal assistance programs and provide funding to DLNR or the Ranch when appropriate and available.

8. MONITORING. Monitoring will be conducted by DLNR personnel in coordination with Ranch personnel and Ranch activities. When birds are in the release pens, monitoring of the pens and adjacent areas will be conducted weekly, concurrent with feeding and predator control activities. Following fledging, survival of released birds will be monitored twice monthly for at least three months. During the breeding season, monthly surveys will be conducted to locate and monitor nesting sites. An annual survey of the Ranch Premises will be conducted with the assistance of the Ranch.

Telemetry will be used to locate and more easily track nene movements. Radio-transmitters will be attached to one or two nene of each group released. Transmitters will be attached using the standard "backpack" developed by DLNR biologists for use on nene in Hawaii. In order to permanently identify nene, prior to their release, goslings will receive microchips inserted by the DLNR endangered species veterinarian.

9. CHANGES IN CONDITIONS OF THIS AGREEMENT. After approval of this Safe Harbor Agreement, agencies and departments of the State, in order to protect a threatened or endangered species, may not impose any new requirements or conditions on, or modify any existing requirements or conditions applicable to, a landowner or successor to the landowner, to mitigate or compensate for changes in the conditions or circumstances of any species or ecosystem, natural community, or habitat covered by the Agreement except as stipulated in HRS §195D-23 (a) and 50 CFR 13.23(b).

This Agreement may be modified or amended by mutual agreement of the Parties and as provided in HRS §195D-23 and 50 CFR 13.23.

10. FUNDING. DLNR's activities associated with the release and management of nene on the Puu O Hoku Ranch will be funded by DLNR. The development costs of the initial nene pen and waterline construction will be covered by a current (FY99) Section 6, Endangered Species, grant E-W-2 from the USFWS. Future maintenance, e.g., salaries, will be covered by State of Hawaii General Fund LNR 402 Appropriations and federal funds from either Section 6 or Pittman-Robertson grants. Salaries and operating funds for Ranch personnel to assist with maintenance and nene management activities will be provided by the Ranch.

11. DURATION OF RIGHTS AND OBLIGATIONS. The rights and obligations under this Agreement shall run with the ownership of the Ranch Premises and are transferable to subsequent property owners in accordance with 50 CFR 13.25 and HRS

§195D-22(d). The obligations under this Agreement will apply for seven years from the date of approval and signing of the Agreement. The rights under this Agreement will hold for the duration of the Federal 10(a)(1)(A) permit and State incidental take permit issued by the USFWS and DLNR and shall survive the expiration, suspension, rescission or sooner termination of this Agreement.

12. SUSPENSION OR RESCISSION OF AGREEMENT AND PERMITS. The USFWS may revoke the Federal enhancement of survival permit pursuant to 50 CFR 13.28(a). The Board of DLNR may suspend or rescind the Agreement, pursuant to §195D-22(c), if it is determined that:

- a. Parties to the Agreement have breached their obligations under the Agreement and have failed to cure the breach in a timely manner, and the effect of the breach is to diminish the likelihood that the Agreement will achieve its goals within the time frames or in the manner set forth in the Agreement; or
- b. The funding source specified in part 10 of this Agreement no longer exists and is not replaced by another sufficient funding source.

13. EARLY TERMINATION. The Ranch may terminate this Agreement upon one hundred eighty (180) days' prior written notice to the other Parties, provided that the baseline conditions are not eroded and that DLNR is provided an opportunity to translocate affected nene within one hundred eighty (180) days of such notice. Upon the expiration or sooner termination of this Agreement, the DLNR shall, within ninety (90) days, remove all of the DLNR's property from Ranch Premises and restore the Ranch Premises to as good a condition as they were in prior to the DLNR's entry, occupancy and/or use thereof if requested to do so by the Ranch. The DLNR shall also take reasonable efforts to capture and translocate any nene that remain on Ranch Premises if requested to do so by the Ranch. All agreements, obligations and liabilities of DLNR and USFWS shall survive the expiration or sooner termination of this Agreement.

14. INDEMNITY. The Ranch shall incur no liability or obligation of any nature to the DLNR or USFWS as a result of the DLNR's entry upon, occupancy, and/or use of the Ranch Premises, the DLNR's activities thereupon, or any assistance that the Ranch provides to DLNR. The DLNR shall at all times with respect to the Ranch Premises exercise due care for public and private safety and hereby agrees, except as limited by Hawaii Revised Statutes Chapters 661 and 662, to indemnify, defend and save the Ranch, and the Ranch's officers, directors, employees and agents harmless against any loss, damage, costs, expenses (including attorneys' fees), liability, demands, or causes of action resulting from, arising out of or in any way connected with the DLNR's presence or entry

on or use or occupancy of the Ranch Premises or the DLNR's Nene release and reintroduction activities hereunder.

IN WITNESS WHEREOF, the Parties hereto have executed this Safe Harbor Agreement as of the first date above written.

PUU O HOKU RANCH, LIMITED

By: _____

Date: _____

**HAWAII DEPARTMENT OF LAND
& NATURAL RESOURCES**

By: _____

Timothy E. Johns, Chairperson
Board of Land & Natural Resources

Date: _____

U. S. FISH & WILDLIFE SERVICE

By: _____

Thomas D. Dwier, Deputy Regional
Director, Portland, Oregon

Date: _____

APPROVED AS TO FORM

Deputy Attorney General
State of Hawaii

List of Appendices:

- Appendix I. State of Hawaii Incidental Take Permit
- Appendix II. USFWS Section 10(a)(1)(A) Permit (To be developed by USFWS)
- Appendix III. Description of Cape Halawa.
- Appendix IV. Guidelines for Handling Injured Nene and Nene Carcasses.
- Appendix V. Schedule of Nene Releases.
- Appendix VI. Findings and Determinations Supporting This Agreement

Appendix I. State of Hawaii Incidental Take Permit (12/1/99 Draft)

12/1/99 DRAFT

State of Hawaii
Department of Land & Natural Resources
Division of Forestry and Wildlife
1151 Punchbowl Street
Honolulu, Hawaii 96813

PROTECTED
WILDLIFE Permit No. WLIT-xx

Date of Issue: _____

Valid Until: Unless Rescinded

PROTECTED WILDLIFE PERMIT
For the purpose of:

INCIDENTAL TAKE

The Board of Land and Natural Resources hereby grants permission under the authority of §195D-22 Hawaii Revised Statutes and all other applicable laws, to:

Puu O Hoku Ranch, Limited
HC-01 Box 900
Kaunakakai, Hawaii 96748

To: take, if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity;

For the purpose of: facilitating the restoration of nene to the wild on Molokai;

The following species:

| <u>Common Name</u> | <u>Scientific Name</u> | <u>No. of Specimens</u> | <u>Location</u> |
|----------------------|----------------------------|---|---|
| Nene, Hawaiian goose | <i>Branta sandvicensis</i> | All nene introduced to the enrolled lands, and their progeny. | Lands owned or otherwise controlled by Puu O Hoku Ranch, Limited. |

Subject to the following conditions:

I. GENERAL CONDITIONS:

- A. This permit only authorizes the permittee to conduct incidental take activities on lands owned or otherwise controlled by Puu O Hoku Ranch, Limited.
- B. This permit is valid for species protected by federal law only if accompanied by proper federal permits. Permit numbers for the required permits must be provided:
USFWS 10(a)(1)(A) permit no. _____
- C. This permit shall become valid upon completion of the following:
 1. A legal representative of Puu O Hoku Ranch, Limited has acknowledged understanding and agreement to abide by its conditions by signing two copies of Attachment 1, which is attached hereto and made a part of this permit.

2. Both copies of the signed permit must be returned to the Division of Forestry and Wildlife. Upon approval by the Chairperson of the Board of Land and Natural Resources, a copy of the permit will be returned to the applicant.
- D. The rights and obligations under this permit shall run with the ownership of the Ranch Premises. Any future transfer of these rights and obligations to a new owner shall be authorized upon execution of a new Attachment 1, signed by an legal representative of the new owner.
- E. The rights and obligations under this permit shall survive the expiration, suspension, rescission or sooner termination of the "Safe Harbor Agreement for the Reintroduction of the Nene to Puu O Hoku Ranch, Island of Molokai".

II. SPECIAL CONDITIONS

- A. The allowable incidental take authorized by this permit is all nene introduced to the enrolled lands, and their progeny.
- B. In the event that one-third or more of the nene introduced to the enrolled lands in the first year of the reintroduction effort are incidentally injured or killed and/or one-third or more of the progeny of the introduced birds (including fertile eggs) are incidentally injured or killed, the Ranch will:
 - i. Confer with DLNR regarding the activities or circumstances resulting in injury or death.
 - ii. Work cooperatively with DLNR to remove and/or minimize the threats to the nene on the enrolled lands that resulted in the incidental take episodes. If mutually agreeable procedures cannot be developed, DLNR may remove nene from the areas involved.
 - iii. As a last resort, cease all attempts at establishing the population of 75 nene on Puu O Hoku Ranch, and allow DLNR to remove all live nene from the Ranch Premises.
- C. When situations arise that pose a threat of adverse impacts to nene and the Ranch, DLNR, and USFWS have actual knowledge of such situations, then the parties shall confer within 10 working days for the purpose of developing measures to address such situations.
- D. Without any limitation on the general nature of the incidental take authorized under this Agreement, Puu O Hoku Ranch shall not be held responsible for any death or injury of nene resulting from a *force majeure* event. The term *force majeure* means events that are beyond the reasonable control of, and did not occur through the fault of negligence of, Puu O Hoku Ranch, including but not limited to: "acts of God" or sudden actions of the elements, including fire, excessive rainfall, and drought. Should a *force majeure* event occur that results in injury or death of nene on the enrolled lands and the principals of the Ranch have actual knowledge of the event, then Puu O Hoku Ranch should simply report such an event to DLNR and USFWS within 10 days of the occurrence.
- E. DLNR will be notified within 30 days in advance of any planned land use practice (e.g., controlled burn, fencing, construction, tilling, hay operation, etc.) which the Ranch reasonably anticipates, in its sole judgement, will result in the incidental take of nene on the enrolled lands; and provide DLNR with the opportunity to capture and/or relocate any potentially affected nene.
- F. DLNR will be notified at least 10 days prior to any planned activity occurring during nene breeding season (approximately October through March) that the Ranch reasonably anticipates, in its sole judgement, will adversely affect any adult, nest or goslings, in order to allow DLNR personnel an opportunity to collect eggs and/or goslings in the area.
- G. Cases of injured or diseased nene will be reported to DLNR as per guidelines in Appendix IV to the "Safe Harbor Agreement for the Reintroduction of the Nene to Puu O Hoku Ranch, Island of Molokai".
- H. Nene that are found dead or accidentally killed will be reported to the Department of Land and Natural Resources, Division of Forestry and Wildlife. Disposition of the carcass will be according to

guidelines described in "Appendix IV. Guidelines for Handling Injured Nene and Nene Carcasses". The Bishop Museum, Honolulu, shall be given first refusal for all specimens which have been salvaged or accidentally killed. (Contact - Vertebrate Collections Manager, Bernice Pauahi Bishop Museum, 1525 Bernice Street, Honolulu, Hawaii 96817-0916, phone # 808-848-4198). Specimens not accepted by the Bishop Museum must be deposited at other recognized museums or universities, unless specifically directed by the Division of Forestry and Wildlife.

TIMOTHY E. JOHNS, Chairperson and Member
Board of Land and Natural Resources

cc: / / DOFAW Maui Branch Wildlife Biologist, Meyer Ueoka
/ / DOCARE
/ / Senior Resident Agent, USFWS-Law Enforcement, Honolulu
/ / USFWS Pacific Islands Office, Honolulu

Attachment No. 1 to PROTECTED WILDLIFE PERMIT No. WLIT-xx

The undersigned has read, understand and hereby agree to abide by the General Conditions (A - E) stipulated on pages 1 and 2 and Special Conditions (A - H) on pages 2 and 3 in PROTECTED WILDLIFE PERMIT No. WLIT-xx.

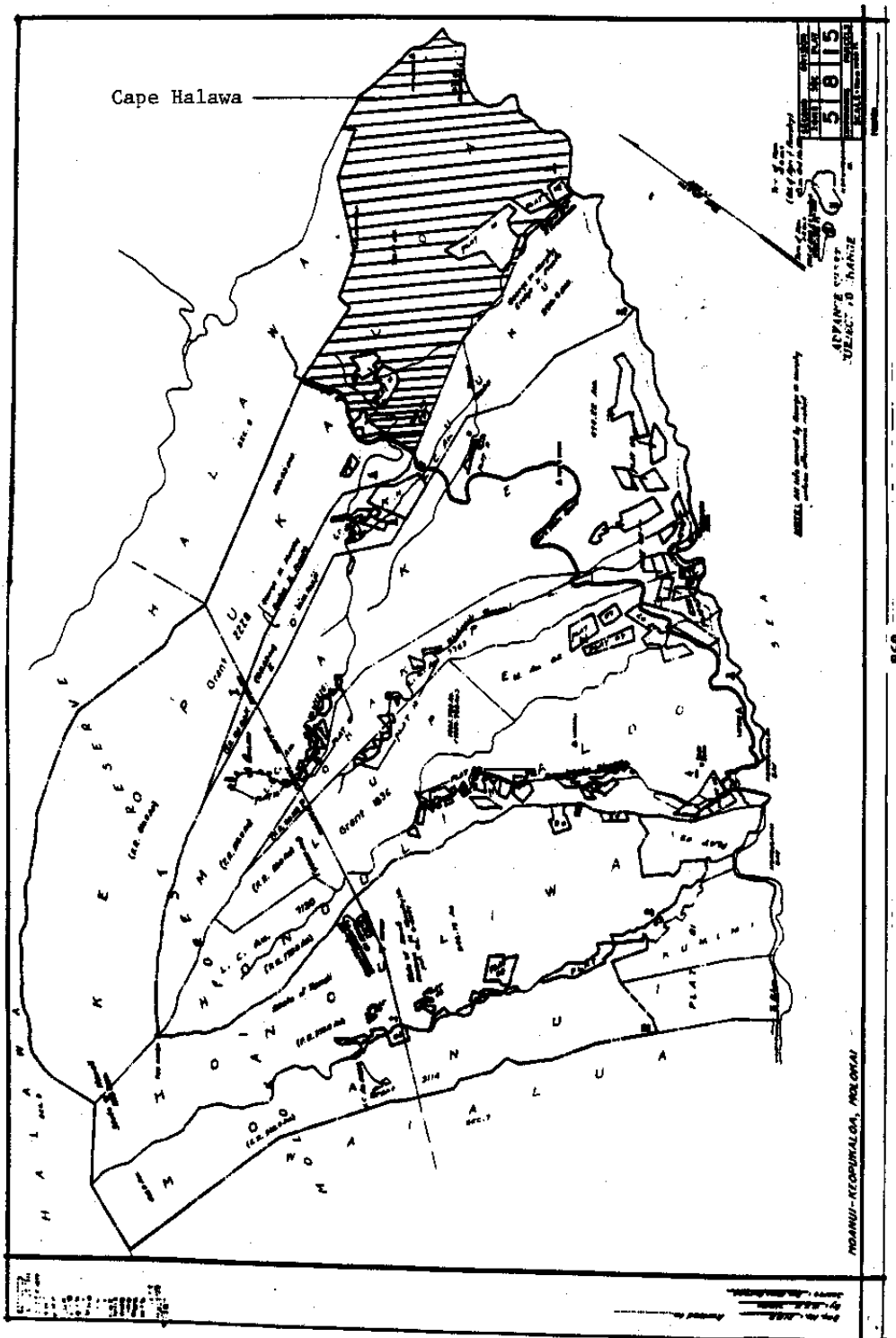
PUU O HOKU RANCH, LIMITED

By: _____

Date: _____

Appendix II. USFWS Section 10(a)(1)(A) Permit (To be developed by USFWS)

Appendix III. Description of Cape Halawa.



Appendix IV. Guidelines for Handling Injured Nene and Nene Carcasses.

The purpose of these Guidelines is to provide Puu O Hoku Ranch personnel with sufficient information to correctly determine the disposition of injured nene or nene carcasses that they encounter on lands owned or otherwise controlled by Puu O Hoku Ranch, Limited.

Criteria for Handling Injured or Ill Birds

1. See if bird can fly. If the bird can fly, do not remove from the field. Report incident to DOFAW personnel as soon as possible. Continue to monitor bird if possible. Record the following information:
 - Date
 - Location
 - Banded/Unbanded (If banded, record band number if possible.)
 - Condition of bird, e.g. type of injury
 - Additional comments
2. If an injured or ill nene cannot fly, do the following:
 - a. Notify Randolph Manaba or Tony Ledesma (Molokai DOFAW) at 553-1745 as soon as possible. If they are not available, contact John Medeiros at 873-3510 (Maui DOFAW).
 - b. Mark area and monitor if possible until State personnel arrive.
3. Injured nene may only be captured by personnel who have been trained in the capture and collection of live nene and after approval is received from DOFAW personnel.

Criteria for Collecting Nene Carcasses

1. All nene carcasses will be collected for necropsy in order to determine cause of death, where possible, and to provide information about general movements.
2. If a bird is found dead and determined to be fresh (less than 48 hours), put bird in sealed plastic bag and place in refrigerator or on ice and contact Randolph Manaba (Molokai DOFAW - 553-1745) or John Medeiros (Maui DOFAW - 873-3510). If unable to contact these personnel within 48 hours, place the bird in a sealed plastic bag in a freezer. Birds will be collected by DOFAW personnel and submitted for necropsy.
3. If bird is obviously in a state of decay, place the bird in a sealed plastic bag in a

freezer and notify DOFAW personnel as soon as possible. Birds will be collected by DOFAW personnel and submitted for necropsy.

4. Record the following information for both dead and injured birds:
 - Date
 - Location
 - Banded/Unbanded (If banded, record band numbers.)
 - Condition of bird
 - Additional comments

Appendix V. Schedule of Nene Releases.

April/May 2000

Week 1 - Place foster parents in open-top pen. These birds will have had some flight feathers clipped so they are rendered flightless until they molt in March 2001. At that time they either will be allowed to fly free; or some flight feathers will be clipped and they will be retained in the pen or moved to another release site in the State.

3rd to 4th week - Release first group of 8 to 10 goslings in open-top pen.

May/June 2000

2nd week - Release second group of 8 to 10 goslings in open-top pen.

4th week - Release 3rd group if available. This release will be made if there are birds which were kept in quarantine longer than expected or if additional goslings become available.

2001 - 2002

Release schedule and amount will be the same as the previous year's.

2003

Additional releases will be based on the results of monitoring survival and success rates of previously released birds.

Appendix VI. Findings and Determinations Supporting This Agreement

According to HRS §195D-22 (b), a Safe Harbor Agreement may authorize incidental take only if the following are applicable:

1. The take would not jeopardize the continued existence of any endangered, threatened, proposed, or candidate species.

Finding: The take authorized by this Agreement and permits applies only to those individual nene that are either released on the enrolled lands or the progeny of released birds on the enrolled lands. It does not apply to any other endangered, threatened, proposed, or candidate species. It would not, in any way, effect nene on other islands and therefore could not jeopardize the continued existence of this or any other endangered, threatened, proposed, or candidate species.

2. The take would not reduce the population of endangered, threatened, proposed, or candidate species below the number found on the property prior to entering into the Agreement.

Finding: As of the date of this Agreement, there are no wild nene on Molokai and no nene whatsoever on Ranch Premises, so the baseline for this Agreement is zero.

3. The Agreement proposes to create, restore, maintain, or improve significant amounts of habitat for a minimum of five years.

Finding: This Agreement will maintain or improve approximately 735 acres of land (Cape Halawa) currently managed as short-grass pasture by cattle ranching activities for a period of seven years.

4. There is adequate funding for the Agreement and the source of that funding is identified.

Finding: The development costs of the initial nene pen and waterline construction will be covered by a current (FY99) Section 6, Endangered Species, grant E-W-2 from the USFWS. Future maintenance, e.g., salaries, will be covered by State of Hawaii General Fund LNR 402 Appropriations and federal funds from either Section 6 or Pittman-Robertson grants. Salaries and operating funds for Ranch personnel to assist with maintenance and nene management activities will be provided by the Ranch.

5. The Agreement increases the likelihood that the endangered or threatened species for which a take is authorized will recover.

Finding: This Safe Harbor Agreement will increase the likelihood that nene will recover by allowing the release of nene into a large area of suitable habitat in a remote area on Molokai - an island well within the historic range of the species, but currently unoccupied by nene. This release and introduction would not be possible without an incidental take provision. The expectation underlying this Agreement is that the release of nene on participating land will result in the establishment of a self-sustaining permanent population of nene on Molokai, the use of a significant amount of short grass habitat on the Ranch by nene and expansion of the population to adjacent suitable private and public lands with nene habitat. The large expanse of suitable habitat on the Ranch will provide the core areas for nene to become established on the island of Molokai. Without this cooperative government/private landowner effort, these lands would not otherwise be utilized by nene in the foreseeable future. It will also provide an example of a mutually beneficial relationship between government agencies and a private landowner to the benefit of an endangered species, and evidence that nene can coexist with current land use practices.

Specifically, this Agreement is expected to result in the following benefits to the species: 1. establish a new population of nene on an island where they do not currently exist in the wild; 2. increase the current range of nene, thereby helping to protect against catastrophic loss of the species; 3. provide an opportunity to increase genetic diversity in the species; 4. increase the number of nene in the wild by at least 200 individuals; 5. provide the opportunity to determine effectiveness of applied management techniques; and 6. provide an additional source of nene for future management activities, if warranted.

6. Any take authorized pursuant to this subsection shall occur only in the habitat created, restored, maintained, or improved.

Finding: Incidental take is authorized for the enrolled lands, i.e. all the lands owned or otherwise controlled by Puu O Hoku Ranch on the Island of Molokai, which are available for nene use, are likely to be utilized by nene for feeding or breeding, and will be available for nene use throughout the duration of this Agreement.

7. The cumulative impact of the activity, which is permitted and facilitated by the take, provides net environmental benefits.

Finding: This Agreement provides the opportunity for the release of nene on private lands, resulting in the establishment of a self-sustaining permanent population of nene on Molokai and the expansion of the population to adjacent private and public lands with suitable nene habitat. The large expanse of suitable habitat on the Ranch will provide the core areas for nene to become established on the island of Molokai. Therefore, the result of this Agreement will be an increase of the number of wild nene in Hawaii thereby providing a net benefit to the species.

Specifically, this Agreement is expected to result in the following benefits to the species: 1. establish a new population of nene on an island where they do not currently exist in the wild; 2. increase the current range of nene, thereby helping to protect against catastrophic loss of the species; 3. provide an opportunity to increase genetic diversity in the species; 4. increase the number of nene in the wild by at least 200 individuals; 5. provide the opportunity to determine effectiveness of applied management techniques; and 6. provide an additional source of nene for future management activities, if warranted.

ATTACHMENT II

Hawaii's Endangered Species Act – SHA Process Timetable Safe Harbor Agreement for Reintroduction of Nene to Puu O'Hoku Ranch

- ◆ Step 1: DLNR/USFWS meet with applicant to discuss concepts of SHA. *[Done]*
- ◆ Step 2: Applicant Prepares Pre-application Agreement. *[Done]*
- ◆ Step 3: Endangered Species Recovery Committee (ESRC) reviews and comments on Pre-Application Agreement. *[Done]*
- ◆ Step 4: Applicant, Department and Service prepare Draft SHA. *[Done-10/99]*
- ◆ Step 5: Draft sent to ESRC. *[Done-11/10/99]*
- ◆ Step 6: ESRC Provides Comments to Department and Applicant. *[Done 11/24/99]*
- ◆ Step 7: Applicant and Department submit draft SHA to Board for approval to release for Public Review. *[1/28/00]*
- ◆ Step 8: Board issues Public notification of availability of the Proposed SHA and Incidental Take License for public review and comment through the Hawaii Office of Environmental Quality Control (OEQC). Comment period not less than 60 days before Board final approval. (OEQC Bulletin Submittal Deadline 1/28/00 for publication in 2/8/00 Bulletin.) *[1/28/00]*
(Confidentiality period ends with OEQC bulletin release)
- ◆ Step 9: Public Review Process. Public hearing to be held on Molokai. Public input and relevant data solicited. *[2/8/00-4/8/2000]*
- ◆ Step 10: Applicant and Department review comments, revise Agreement if needed, and submit to ESRC for final review. *[4/2000]*
- ◆ Step 11: ESRC provides final recommendation to Department and Board to accept, amend, or reject SHA and Incidental Take License. *[4-5/2000]*
- ◆ Step 12: Board decision on SHA proposal and Incidental Take License. *[4-5/2000]*
- ◆ Step 13: Signing of SHA and Issuance of Incidental Take License. *[4-5/2000]*

Pjc: 1/18/00

Attachment III.

**Comments and Recommendations from the Endangered Species Recovery Committee on the Draft
Safe Harbor Agreement For The Introduction Of The Nene To Puu O Hoku Ranch, Island Of
Molokai**

November 29, 1999

TO: Honorable Chairperson and Board, Department of
Land and Natural Resources

FROM: ENDANGERED SPECIES RECOVERY COMMITTEE (ESRC)

Dr. William Steiner, Director, USGS - Biological
Resources Division, Univ. of Hawaii
Mr. Robert Smith, Ecoregion Manger, USFWS - Pacific
Islands Ecoregion
Mr. Tim Johns, Chair, Dept. of Land and Natural Resources
Dr. John Harrison, Executive Director, Environmental
Center, Univ. of Hawaii
Dr. Marie Morin, Appointed Member, Kailua-Kona
Mr. Rick Warshauer, Appointed Member, USGS - BRD,
Volcano, HI
Dr. Jim Jacobi, USGS - BRD, Hawaii Nat. Park, HI (BRD
Designated Representative)
Ms. Karen Rosa, USFWS - Pacific Islands Ecoregion (FWS
Designated Representative)
Mr. Paul Conry, Wildlife Program Manager, DOFAW (DLNR
Designated Representative)

SUBJECT: ESRC Recommendations regarding the Draft Safe Harbor
Agreement for the Reintroduction of Nene to Pu'u o Hoku
Ranch, Island of Moloka'i, between Puu o Hoku Ranch
Limited and State of Hawai'i (DLNR) and U.S. Fish and
Wildlife Service (USFWS) and accompanying Draft
Incidental Take Permit.

The ESRC has been requested to make recommendations regarding the Draft Safe Harbor Agreement for the Reintroduction of the Nene to Puu o Hoku Ranch, Island of Moloka'I, dated 11/9/99, and an accompanying Draft Incidental Take Permit dated 11/22/99. The ESRC is aware that the current Nene Recovery Plan is outdated (1983) and does not mention Nene reintroductions on islands other than Hawai'I and Maui, but fossil work since that time has shown that Nene originally occurred on most or all of the main Hawaiian Islands. The draft Revised Nene Recovery Plan (Oct. 1999) is not yet available to the public, but will contain reintroduction strategies involving additional main islands, including Moloka'i. The ESRC does not think that the Revised Recovery Plan must be approved before Nene reintroductions occur, since we do not want to hold up activities which may benefit Nene, although ESRC does strongly suggest that a more detailed Reintroduction Plan be written and approved by DLNR prior to any specific reintroduction activities.

Although ESRC agrees with the intent of the Draft Safe Harbor Agreement and Draft Incidental Take permit, we see the potential to improve both the Safe Harbor Agreement and the Incidental Take permit, thereby insuring that all Parties to the Agreement, the public, and the Nene, will benefit. Our recommendations and suggested changes follow:

- 1) As mentioned previously, a Reintroduction Plan should be written and approved by DLNR for the Pu'u o Hoku Ranch, providing a better overview as to how this action fits into overall Statewide Nene management and species maintenance, as well as a more detailed description as to how the day-to-day reintroduction will be carried out. The ESRC also recommends that the Reintroduction Plan document the source of genetic material used for a) the initial Nene release at the Ranch, and b) any subsequent releases, and utilizes a complete and balanced representation of remaining gene lines, as much as is prudently possible. The Reintroduction Plan should include documentation of predator control methods that will be used at Puu o Hoku, and means of assessing the efficacy of those control methods. The Reintroduction Plan should also address the possibility of incidental take "off site".
- 2) Maps indicating the specific boundaries of the "No Hunting" areas at Cape Halawa should be included in both Agreement and Permit.
- 3) Under the Safe Harbor Agreement, ESRC recommends that DLNR (Responsibilities, page 7) should be required to not only (section f) "Monitor Nene;" but to "Uniquely color-band and mark with metal numbered bands, and monitor Nene;" in order to understand how and why the reintroduction succeeds or fails. Only by following individual Nene survival and causes of mortality will we learn how to successfully reintroduce populations. In addition, on page 6 (Puu o Hoku Ranch Responsibilities), ESRC recommends that the Ranch should be required to not only "Provide reports to DLNR on Nene mortalities, injuries, or disease observed on the Ranch premises", but to also immediately pick up any Nene found dead and freeze it, or otherwise immediately transfer the fresh carcass(es) to DOFAW, so that mortality can be determined. To this end, ESRC recommends that DLNR provide the Ranch with a deep freeze, so that carcasses can be appropriately maintained until they are necropsied for cause-of-death. ESRC wishes to emphasize their concern that causes of mortality need to be closely monitored in such a reintroduced population, and all carcasses should be necropsied, so that future mortality can be reduced once the most common mortality factors are known. ESRC recommends that the Draft Incidental Take Permit should be amended to reflect these recommended changes, most notably under Special Conditions G and H, which require reporting only. ESRC recommends that the permit go beyond reporting and require the

Ranch to account for carcasses by immediately picking up and freezing all carcasses for eventual necropsy and determination of cause-of-death by DLNR or their designated agents.

- 4) ESRC did not have access to Appendix IV of the Draft Safe Harbor Agreement Procedures for Handling Injured Nene and Nene Carcasses) at the time of our review, and would like the opportunity to view and comment on same.
- 5) ESRC recommends that (page 9 of Safe Harbor Agreement draft), under the first Finding, that the wording "_therefore could not jeopardize the continued existence of this or any other endangered, threatened, proposed, or candidate species." be reworded to state "_therefore is not likely to jeopardize the continued existence of this..etc.", acknowledging the inability of mere humans to foresee the future.
- 6) ESRC also recommends that page 7 of the draft Safe Harbor Agreement be amended to reflect that DLNR commits funding for the full range of commitments that are outlined in page 7.
- 7) The ESRC has some concern regarding adjacent landowners to Puu o Hoku Ranch, and strongly recommends that they should be contacted prior to any Nene are released at Puu o Hoku, and not only briefed on the intended release but also provided an opportunity to enter into a Safe Harbor Agreement, since it is likely that Nene could eventually free-fly onto their property. The ESRC recommends that DLNR notify adjacent landowners regarding the development of this Safe Harbor Agreement with Puu o Hoku Ranch, and further recommends that DLNR develop informational material to be given to adjacent landowners and at public meetings. ESRC recommends that informational materials include a thorough description of Incidental Take Permits, including the definition of "incidental take", which does not allow the deliberate take of endangered species by anyone.

The ESRC recommends that the Board favorably consider both the Draft Safe Harbor Agreement and the Draft Incidental Take Permit pending these revisions suggested above. We thank you for the opportunity to review this proposed Agreement for reintroduction of Nene into former habitat.

Prepared By: Dr. Marie Morin

Submitted by:

PAUL J. CONRY

January 27, 2000

Note to Reviewers of this document.

The comments provided by the Endangered Species Recovery Committee pertain to a 11/9/99 Draft of the Safe Harbor Agreement and a 11/22/99 draft of the Incidental Take Permit. The 1/18/00 Draft provided here for your review contains some clarifications in language and additions (items 13 and 14) requested by the applicant which were added after the Committee prepared their comments. The Committee will review these and all other changes proposed during the public review process prior to submittal of the Agreement to the Board of Land and Natural Resources for approval.

Paul Conry
Wildlife Program Manager
Division of Forestry and Wildlife